

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

NATIONAL OILWELL VARCO, L.P.,

Plaintiff,

v.

JULIO GARZA,

Defendant.

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Case No. 4:22-CV-02006

PLAINTIFF’S RESPONSE TO DEFENDANT’S PARTIAL MOTION TO DISMISS

Plaintiff National Oilwell Varco, L.P. (“NOV”) responds to Defendant Julio Garza’s (“Garza”) partial motion to dismiss [Doc. No. 59] as follows:

1. Garza’s motion should be denied as moot.
2. On August 2, 2022, Garza moved pursuant to Fed. R. Civ. P 12(b)(3) that NOV’s damages claims be dismissed because they are, *arguendo*, covered by a valid and enforceable arbitration agreement. Garza does not dispute, however, that NOV’s remaining claims — *e.g.*, its claims for injunctive relief — are properly before this Court.
3. On August 23, 2022, NOV amended its complaint [Doc. No. 66] to further clarify that it does not seek the recovery of damages against Garza herein and is instead reserving such claims for arbitration. Specifically, NOV asserts causes of action against Garza for breach of contract, breach of fiduciary duty, and misappropriation of trade secrets under the Texas Uniform Trade Secrets Act, the Defend Trade Secrets Act of 2016, and the Computer Fraud and Abuse Act, and requests that the Court maintain the current preliminary injunction [Doc. No. 61], and, after final hearing, enter all appropriate injunctive relief, as well as award NOV its reasonable and necessary attorney’s fees incurred.

4. In light of such amendment, NOV has requested that Garza withdraw his motion. However, Garza has yet to respond. NOV therefore files this response out of an abundance of caution. Garza's motion should be denied as moot. NOV has amended its complaint to clarify that it does not seek the recovery of damages against Garza herein and is instead reserving such claims for arbitration. *See Pena v. City of Rio Grand City*, 398 F.Supp.3d 127, 142 (S.D. Tex. 2019) ("Ordinarily when an amended pleading is filed, any previously filed motions to dismiss are mooted.") (citing *Boelens v. Redman Homes, Inc.*, 759 F.2d 504, 508 (5th Cir. 1985) ("[A]n amended complaint ordinarily supersedes the original and renders it of no legal effect, unless the amended complaint specifically refers to or adopts the earlier pleading.")).

Accordingly, NOV requests that the Court enter an order denying Garza's motion as moot. Additionally, NOV requests that it be awarded all other and further relief, general and specific, legal or equitable, to which it may justly be entitled.

[Signature Page to Follow]

DATED: August 23, 2022.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 23, 2022, a true and correct copy of the foregoing document was served electronically via the Court's CM/ECF system and/or United States Mail, postage pre-paid, to the parties entitled to receive such notice.

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